

**Before the
FEDERAL COMMUNICATIONS PETITION
Washington, D.C. 20554**

In the Matter of

Wireless LNP Forbearance

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WT Docket No. 01-184

SPRINT PCS COMMENTS

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September 21, 2001

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Summary

Sprint PCS supports the Verizon Wireless petition for forbearance from the wireless local number portability (“LNP”) mandate. Sprint PCS demonstrates that the forbearance statute requires that the Commission abrogate the LNP regulatory mandate. Importantly, maintaining the current LNP deadline will also inhibit Sprint PCS’ ability to timely and successfully implement number pooling without impacting continued network reliability.

Sprint PCS is committed to implementing number pooling on November 24, 2002. The changes necessary for Sprint PCS to become pooling compatible are numerous and extensive, but the Company is on track to meet the pooling deadline. But Sprint PCS’ ability to meet the pooling start date is put in jeopardy if LNP is concurrently implemented — an effort that is far greater in every instance (cost, man-hours, system impacts, customer relations) than pooling. In short, the magnitude of the work necessary to implement LNP — while also implementing pooling, CALEA, TTY, E911 Phase I, E911 Phase II — is enormous.

Sprint PCS estimates that for systems modifications needed for LNP alone, it must invest 170,000 man-hours and \$26 million between now and the current November 24, 2002 LNP start date. Sprint PCS and other CMRS carriers have finite resources, both capital and labor. Resources devoted to LNP implementation necessarily are resources that cannot be devoted to other purposes — including ensuring that pooling and other regulatory mandates are successfully implemented. The events of the past 10 days have confirmed the importance of reliable mobile networks, and the Commission should not put at risk the ability of the wireless industry to continue to maintain reliable networks.

The mobile telecommunications marketplace is robustly competitive. The theory of mandated LNP is that that the capability will make the market even more competitive, resulting in even lower prices. But in addition to the significant costs of implementing LNP, Sprint PCS estimates it will need to spend an additional \$50 million each year to operate in an LNP environment. The Commission cannot expect mobile prices to fall when carriers face significant new annual expenses without any corresponding increase in revenues. Sprint PCS is confident that if consumers were given the choice, they would overwhelmingly prefer lower prices with more robust coverage and advanced services *without* LNP, than higher prices *with* LNP and less coverage and less advanced services.

Sprint PCS urges the Commission to establish priorities here. E911 services are important. TTY capabilities are important. Implementing number pooling is important. The sooner the Commission removes the LNP regulatory mandate, the sooner industry can better focus its resources. Sprint PCS therefore renews its request that the Commission act on the Verizon Wireless LNP forbearance petition by the end of the year (or, alternatively, that it suspend the LNP deadline for 12 to 15 months after the forbearance order is issued).

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Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS"), submits these comments in support of the Petition for Forbearance filed by Verizon Wireless.¹ As discussed below, forbearance of the wireless local number portability ("LNP") mandate is legally required under the forbearance statute, Section 10 of the Communications Act. In addition, the costs to both implement and operate LNP are large, and these costs far outweigh any potential benefits. Indeed, if the experience of landline LNP is any guide, consumers may see price increases in their mobile services as a result of LNP.

Sprint PCS does not seek relief from the requirement that wireless carriers participate in number pooling, and it does not ask that the November 24, 2002 start date for number pooling be deferred. To the contrary, as it advised the Commission earlier this week, Sprint PCS also supports LNP forbearance to "help ensure that pooling is implemented both successfully and timely":

As removal of the LNP would enable Sprint to focus more on implementation and testing of pooling, Sprint PCS believes that the elimination of the LNP mandate

¹ See *Public Notice*, WTB Seeks Comment on Wireless LNP Forbearance Petition Filed by Verizon Wireless, WT Docket No. 01-184, DA 01-1872 (Aug. 7, 2001).

will help ensure that pooling can be implemented on November 24, 2002 without exposing its network to undue risks of network reliability.²

Sprint PCS is committed to implementing number pooling on November 24, 2002, and it believes it will meet this date. The most significant change it must make to implement pooling is the separation of the Mobile Identification Number ("MIN") from the Mobile Directory Number ("MDN"). Sprint PCS is currently testing mobile switching center ("MSC") software that incorporates the MIN/MDN separation and the new Location Routing Number ("LRN") functions needed for pooling. This is the same software that supports E911 Phase II location capabilities. Sprint PCS has already committed to the Commission in the E911 docket that the installation of this new MSC software throughout its nationwide network will be completed no later than August 1, 2002 — nearly four months in advance of the pooling start date.³

Admittedly, there will be much to do between August 1 and November 24, 2002 to ensure that number pooling is implemented successfully, including testing of all the network components and modified operational systems required to implement number pooling. But it is common sense that Sprint PCS' ability to meet the November 24, 2002 pooling start date is put in jeopardy if Sprint PCS (and all other CMRS carriers) must concurrently implement LNP on November 24, 2002 as well — an effort that is far greater in every instance (cost, man-hours, system impacts, customer relations) than pooling.

It is time for the Commission to establish priorities. Phase II E911 service is important. TTY capabilities are important. Implementing number pooling is important. The sooner the Commission removes the LNP regulatory mandate, the sooner industry can better focus its re-

² Sprint PCS Petition to Advance Reply Comment Date and to Adopt Expedited Decision-Making Processes, Docket No. 01-184, at 1 and 6 (Sept. 17, 2001), *appended hereto as Appendix A*.

³ See Sprint PCS Reply Comments and Further Supplemental Report, Docket No. 94-102 (Sept. 4, 2001); Sprint PCS Supplemental Phase II Implementation Report and Request for Temporary and Limited Waiver, Docket No. 94-102 (July 30, 2001).

sources. Sprint PCS therefore repeats its request that the Commission act on the Verizon Wireless LNP forbearance petition by the end of the year (or, alternatively, suspend the LNP deadline for 12 to 15 months after the forbearance order is issued).

I. SECTION 10 OF THE COMMUNICATIONS ACT REQUIRES FORBEARANCE OF THE LNP REGULATORY MANDATE

Section 10 of the Communications Act specifies that the Commission “*shall* forbear from applying any regulation” if it determines that the three factors set forth in the statute are met.⁴ The Commission has recognized that it has no discretion in denying a forbearance petition upon demonstration of the three-pronged statutory standard.⁵ As Verizon Wireless demonstrates in its petition and as Sprint PCS further demonstrates below, all three forbearance criteria are satisfied with respect to the LNP mandate. Accordingly, “the Commission shall forbear from applying [the LNP] regulation” as applied to providers of commercial mobile radio service (“CMRS”).⁶

It bears emphasis that wireless LNP is a regulatory mandate, not a statutory mandate. Congress decided in February 1996 that landline LECs, but not CMRS carriers, should be required to provide LNP.⁷ Nevertheless, only six months later, in July 1996, the Commission decided to extend the LNP mandate to CMRS carriers, citing “independent” authority to impose

⁴ 47 U.S.C. § 160(a)(emphasis added).

⁵ See, e.g., *CTIA LNP Forbearance Order*, 14 FCC Rcd 3092, 3100 ¶ 17 (1999)(FCC “*must* forbear from applying any regulation” upon demonstration of the statutory criteria)(emphasis added); *Certain Wireless Carrier Forbearance Order*, 15 FCC Rcd 1744, 17415 ¶ 3 (2000)(FCC “is directed to forbear from applying any regulation . . . if the three-pronged test is met.”); *2000 Biennial Review*, 16 FCC Rcd 10647 ¶ 10 (2001)(“Section 10(a) of the Communications Act requires the Commission to forbear from applying . . . regulations . . . if the Commission makes three specific determinations.”).

⁶ 47 U.S.C. § 160(a)(emphasis added).

⁷ See 47 U.S.C. § 251(b)(2). As the FCC has recognized, this statute “explicitly excludes commercial mobile service providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability.” *LNP Order*, 11 FCC Rcd at 8431 ¶ 152.

this new mandate “as we deem appropriate.”⁸ But as Commissioner Abernathy acknowledged earlier this week, “our job is to implement the statute, not to pursue our own policy preferences.”⁹

A. Criterion No. 1: LNP Is Not Necessary to Ensure that Rates and Practices Are Just, Reasonable and Nondiscriminatory

Section 10(a)(1) specifies that forbearance is warranted if the regulation is “not necessary to ensure that the charges, practices [or] classifications . . . are just and reasonable and are not unjustly or unreasonably discriminatory.”¹⁰ It cannot be credibly said that the LNP mandate is “necessary” to ensure that prices and practices for mobile services remain just and reasonable. The Commission noted only two months ago that there is “a high level of competition for mobile telephony customers” and that this intense competition is resulting in “lower prices for consumers and increased diversity of service offerings.”¹¹ Indeed, the Commission held over two years ago, in February 1999, that LNP “is not necessary to prevent unjust or unreasonable charges or practices by CMRS carriers.”¹² Given the dramatic growth in competition since then, it necessarily follows that LNP is “not necessary” today to ensure that CMRS prices and practices are just, reasonable, and nondiscriminatory.

⁸ *LNP Order*, 11 FCC Rcd 8352, 8431 ¶ 153 (1996).

⁹ Hon. Kathleen Q. Abernathy, FCC Commissioner, FCBA Luncheon Address (Sept. 17, 2001).

¹⁰ 47 U.S.C. § 160(a)(1).

¹¹ *Sixth Annual CMRS Report*, FCC 01-192, at 5 and 21 (July 17, 2001).

¹² CTIA Forbearance Order, 14 FCC Rcd 3092, 3101 ¶ 19 (1999).

B. Criterion No. 2: LNP Is Not Necessary for the Protection of Consumers

Section 10(a)(2) specifies that forbearance is warranted if the regulation is “not necessary for the protection of consumers.”¹³ Consumers are protected by competition and choice. As noted above, the Commission recently determined that there exists today “a high level of competition for mobile telephony customers.”¹⁴

The Commission adopted the LNP mandate five year ago under the rationale that “the inability of customers to keep their telephone numbers when switching carriers . . . hinders the successful entrance of new service providers”:

We believe, therefore, that service provider portability, by eliminating one major disincentive to switch carriers, will ameliorate customers’ disincentive to switch carriers if they must purchase new equipment.¹⁵

The Commission also predicted that LNP “will . . . facilitate the viable entry of new providers” by “remov[ing] barriers to competition among such [CMRS] providers.”¹⁶

In this case, the Commission’s predictive judgment has not been confirmed by subsequent developments. Sprint PCS, which began launching its services about the time the Commission adopted its LNP mandate in 1996, has become the nation’s fourth largest CMRS provider, serving over 13 million Americans — *without* the “benefits” of LNP. And, there are no facts whatsoever suggesting that the absence of LNP acts as a “disincentive” for customers to switch carriers. Indeed, the Commission has noted that “almost one in five wireless subscribers”

¹³ 47 U.S.C. § 160(a)(2).

¹⁴ *Sixth Annual CMRS Report* at 21.

¹⁵ *LNP Order*, 11 FCC Rcd 8352, 8434 ¶ 157 (1996).

¹⁶ *Id.* at 8434-35 ¶¶ 157-58. Sprint PCS did not participate in the original LNP proceeding (Docket No. 95-116) because it was busy building its network in order to launch services. But in February 1998 Sprint PCS opposed the mandate, noting that the benefits had “not been demonstrated” and that the “enormous capital requirements associated with implementing [LNP] impede buildout, aggressive marketing, and price competition – which are all keys to meaningful competition – to the detriment of the public inter-

— that is, approximately 20 million consumers — switched carriers during 2000 alone.¹⁷ In sum, it can be said with certainty that LNP is “not necessary for the protection of consumers.”

C. Criterion No. 3: LNP Forbearance Is Consistent with the Public Interest

Section 10(a)(3) provides that forbearance is appropriate if “consistent with the public interest.”¹⁸ In applying this public interest standard, Congress has specified that the Commission “shall consider whether forbearance . . . will enhance competition among providers of telecommunications services.”¹⁹ The Commission determined over two years ago that LNP forbearance is “also in the public interest on competitive grounds” because LNP is “likely to have a relatively small positive impact on wireless-to-wireless competition.”²⁰

LNP will be costly to implement and to operate. As Sprint PCS advised the Commission earlier this week, it estimates it will spend a minimum of *\$26 million to implement* LNP and spend a minimum of *\$50 million annually to operate* LNP — sums *in addition to* what it is spending to implement number pooling (and to implement CALEA, TTY, E911 Phase I and Phase II).²¹ It is important to emphasize that these large expenditures will not result in generating a single new dollar of revenue. In addition, capital and resources spent on LNP necessarily are capital and resources that Sprint PCS cannot devote to other activities including continued network buildout, improved customer care systems, new 3G network capabilities or advanced

est.” Sprint PCS Comments Supporting CTIA’s Petition for Forbearance, Docket No. 95-116, at 3 (Feb. 23, 1998).

¹⁷ *Sixth Annual CMRS Report* at 23. See also *CTIA Forbearance Order*, 14 FCC Rcd at 3109 ¶ 34 (“[T]he high churn rates associated with wireless carriers suggest that the lack of wireless number portability . . . is not a barrier to customers switching carriers.”).

¹⁸ 47 U.S.C. § 160(a)(3).

¹⁹ *Id.* at § 160(b).

²⁰ *CTIA Forbearance Order*, 14 FCC Rcd at 3109 ¶ 34.

²¹ See Appendix A. Sprint PCS is reviewing these costs estimates and hopes to have more detailed information in the near future for submission in the public record.

services such as the Wireless Web. Competition is enhanced by improved network coverage and by an increased diversity in service offerings, so consumers can enjoy even more choices. Competition is not enhanced when, because of a government mandate, all carriers must spend millions deploying the identical capability that will not increase coverage in any way or add any new feature or service.

Notwithstanding its decision that LNP is not necessary to promote competition, the Commission nonetheless decided in February 1999 that it should delay the LNP conversion date rather than eliminate the requirement. As demonstrated below, one of the reasons is based on an inaccurate assumption, and the second reason is based on a flawed analysis.

1. LNP Is Not Required for Number Pooling

In February 1999, the Commission decided to defer the LNP implementation deadline, rather than abrogate the requirement, because of its belief that “implementation of LNP is a necessary precondition to the implementation of number pooling,” with the Commission concluding that the “public interest could be jeopardized if CMRS cannot participate in LNP-based conservation techniques such as number pooling.”²² But as Verizon Wireless points out in its petition, the Commission’s assumption that an LNP porting capability is needed to implement number pooling is not accurate.²³ While porting and pooling both require MIN/MDN separation and the same network architecture, known as Location Routing Number (“LRN”), implementation of LNP requires many additional modifications that are not necessary for implementation of pooling. As Sprint PCS has already advised the Commission, it expects to spend an estimated \$26

²² *CTIA Forbearance Order*, 14 FCC Rcd at 3116 ¶ 48

²³ *See Verizon Wireless Petition* at 9-13.

million between now and November 2002 towards implementing "LNP-only" capabilities -- expenses it would not incur if the LNP mandate were removed.

Not only is the Commission assumption (LNP is needed for pooling) inaccurate, but the simultaneous implementation of LNP and pooling undermines industry's ability to implement pooling timely and successfully. There exists a higher probability of completing a task timely and successfully if one must complete only one complex task rather than two complex tasks by the same date. Accordingly, the Commission should remove the LNP mandate to help ensure that all wireless carriers can successfully and timely complete the conversion to number pooling.

CMRS carriers are committed to providing reliable service.²⁴ Recent events have confirmed the important role that wireless networks play in our society and the importance of reliable mobile networks. The Commission should therefore proceed carefully and act judiciously when the CMRS industry expresses concern that certain regulatory mandates and deadlines pose an undue risk to continued network reliability.²⁵

2. The Commission Must Consider the Costs of LNP in Addition to Any Purported Benefits

The Commission decided in February 1999 to defer rather than remove the LNP mandate for a second reason: its belief that wireless LNP will provide "important benefits to consumers":

[W]e reject the argument . . . that the record supports complete forbearance from enforcing our wireless [LNP] requirements. We emphasize that the competitive reasons that led us to mandate wireless [LNP] in the *First Report and Order* remain fundamentally valid: we sought to increase competition both within the

²⁴ "The fact that our communications networks performed as well as they did [since September 11] is a testament to the careful work of organizations dedicated to ensuring the reliability of the public switched telephone network." Hon. Kathleen Q. Abernathy, FCC Commissioner, FCBA Luncheon Address (Sept. 17, 2001).

²⁵ *See id.* ("FCC needs to . . . recognize the limits of what it knows and can achieve, particularly during this time of rapid technological change. . . . [W]e cannot possibly duplicate the vast knowledge base of the industry we regulate. The communications industry is perhaps the most technologically advanced sector of our economy.").

CMRS marketplace and with wireline carriers, and found that this competition would provide incentives for all carriers to provide innovative service offerings, higher quality services and lower prices.²⁶

The Commission did not, however, identify the specific “benefits” it expected consumers would realize with LNP. Notably, even without LNP, “existing markets demonstrate a high level of competition for mobile telephone services” and there is growing competition between mobile and landline services.²⁷ As the Commission recognized in its *Sixth CMRS Annual Report* with respect to landline/wireless competition:

- According to a recent survey by the Yankee Group, about 3 percent of mobile customers rely on their wireless phone as their only phone;
- In a survey performed for the Consumer Electronics Association, three in 10 wireless phone users stated they would rather give up their home telephone than their wireless phone. Among wireless users aged 18 to 34 years old, that figure rose to 45 percent;
- Wireless use has begun to erode wireline revenue due to “technology substitution”;
- In one recent survey, 12 percent of respondents said they purchased a wireless phone instead of installing an additional wireline phone; and
- Some wireless carriers have begun offering service plans designed to compete directly with wireline local telephone service, with Leap stating that half of its customers view their handsets as replacements for first or second lines.²⁸

But even if the Commission could now identify the benefits of LNP, it has never considered the costs of LNP. As noted above, Sprint PCS estimates it will spend at least \$26 million between now and November 2002 in LNP-only implementation costs. More dramatically, it estimates it will spend a minimum of *\$50 million extra each year* in order to operate in an LNP environment. For example, customer questions, undertaking the multiple steps involved in processing a port request, and conflict resolution will increase significantly average call handling

²⁶ *CTIA Forbearance Order*, 14 FCC Rcd at 3103 ¶ 23 and 3112-13 ¶ 40.

²⁷ *Sixth Annual CMRS Report* at 21.

²⁸ *See id.* at 32-34

times during carrier/customer communications. While it has not finalized its plans, Sprint PCS currently estimates that additional staffing requirements as a result of the LNP mandate will approximate a 300-500 seat calling center. Clearly, costs of this magnitude, both implementation and recurring operational expenses, cannot be justified because some unidentified number of customers may find LNP convenient.

The argument has been made in the past that LNP will further intensify competition and lead to even lower prices. However, all available facts suggest that just the opposite would likely occur — namely, prices for mobile services will increase (as carriers recoup their sizable LNP costs):

**Consumer Price Index for Fixed Landline
and Mobile Wireless Services²⁹**

	<u>LEC</u>	<u>CMRS</u>
CPI - February 1999	167.1	89.7
CPI - August 2001	186.6	68.1
Percent Difference	+11.7%	-24%
LNP Capable	Yes	No

These facts confirm that LNP does not necessarily result in lower prices to consumers.

In addition to the enormous development and operational costs of LNP, there are also significant opportunity costs that must be taken into consideration. Resources dedicated to LNP will undoubtedly detract from resources that could be used to enhance coverage, improve service and quality, and develop advanced services. Sprint PCS is confident that if consumers were

²⁹ See Consumer Price Index – All Urban Consumers, “Telephone services, local charges” and “Cellular telephone services.” See <http://stats.bls.gov/cpihome.htm>.

given the choice, they would overwhelmingly prefer lower prices, more robust coverage, improved service and quality, and advanced services over LNP.

In an order adopted on June 27, 1996, the same date that it adopted its wireless LNP mandate, the Commission held that the decision whether to impose new regulations on competitive mobile carriers should be framed by three questions:

First, is there a need for Commission action? Second, if we are persuaded that regulation would serve the public interest, what specific action should be taken? Third, what are the disadvantages of such action, especially as to network costs and additional burdens on providers, particularly smaller providers?³⁰

The Commission did not perform a cost-benefit analysis when it initially imposed its LNP mandate in 1996. It did not perform a cost-benefit analysis in considering the CTIA forbearance petition in 1999. In the event that the Commission believes the LNP regulatory mandate may still be warranted, it should conduct a cost-benefits analysis before proceeding.

In summary, if the Commission believes that LNP will provide benefits to consumers, it must (1) articulate those benefits with precision, (2) quantify those benefits, and then (3) compare those benefits with the costs of implementing and operating LNP. Sprint PCS submits that the LNP mandate cannot be justified under a cost-benefits analysis.

II. CONCLUSION

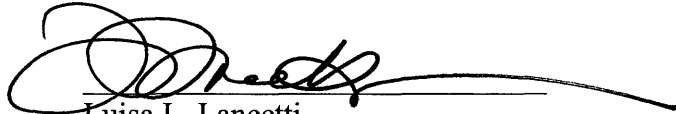
For the foregoing reasons, Sprint PCS respectfully requests that the Commission grant the Verizon Wireless LNP forbearance petition. For the reasons stated above and set forth in its September 17, 2001 expedition petition, Sprint PCS further requests that the Commission act on the forbearance petition by the end of the year (or, alternatively, suspend the LNP deadline for 12 to 15 months after the forbearance order is issued). As Commissioner Abernathy has noted,

³⁰ *Second CMRS Interconnection Order*, 11 FCC Rcd 9462, 9473 ¶ 18 (1996).

regulatees “deserve prompt, well-informed answers to regulatory inquiries . . . even if we can’t always give you the substantive answers you seek.”³¹

Respectfully submitted,

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³¹ Hon. Kathleen Q. Abernathy, FCC Commissioner, FCBA Luncheon Address (Sept. 17, 2001)(“When I was in the private sector, long delays were what I worried about most. . . . It was regulatory uncertainty that was the most damaging and frustrating. Based on that experience, I will do everything in my power to push the Commission to deliver answers as promptly as possible.”).

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WT Docket No. 01-184

**SPRINT PCS PETITION TO ADVANCE REPLY COMMENT DATE
AND TO ADOPT EXPEDITED DECISION-MAKING PROCESSES**

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September 17, 2001

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Summary

Sprint PCS submits this petition to help ensure that number pooling, which has a November 24, 2002 start date, is implemented successfully and timely. LNP and pooling are each major undertakings, and given other regulatory mandates that are underway (e.g., CALEA, E911 Phase I and Phase II, TTY), CMRS carriers are facing a significant strain on technical resources. The simultaneous conversion of LNP and pooling on the same date would pose an unreasonable risk to the reliability of wireless carrier networks.

Verizon Wireless has made a compelling case that the Commission should forbear from applying the LNP mandate. Commission grant of this petition would free up sizable resources that could instead be devoted to implementation of other mandates and, by narrowing the scope of work that must be completed by November 24, 2002, would help ensure that pooling is implemented successfully and timely without degradation to network reliability.

The timing problem posed is that to meet the current November 24, 2002 start date for LNP, CMRS carriers must begin executing vendor contracts and begin increasing sharply the technical resources devoted to LNP implementation approximately ten months in advance of the start date (i.e., shortly after the beginning of the year). Sprint PCS submits that the public interest is not served by industry's expenditure of sizable capital and systems modifications in pursuit of the LNP mandate in advance of Commission action on the pending LNP forbearance petition.

LNP is going to be expensive to operate. Sprint PCS currently estimates that its own costs of operating in an LNP environment will increase by at least \$50 million annually (much more if automation efforts are not successfully and timely completed). However, these recurring costs would be incurred only after LNP becomes operational.

This petition is not about these large, recurring operational costs, however. Sprint PCS is confident that the Commission will be able to act on Verizon Wireless LNP forbearance petition before the current November 24, 2002 LNP conversion deadline. This petition is rather about the costs, both capital and personnel resources, that are required to *implement* LNP and how these additional LNP activities undermine Sprint PCS' ability to implement timely and successfully thousands block number pooling, and potentially undermine network reliability as well.

Sprint PCS estimates that an LNP forbearance decision by the end of the year would result in a savings of approximately \$21.1 million in LNP design, build, testing and implementation costs, which would include 120,000 man-hours. (Further, between now and the end of the year, Sprint PCS estimates it will spend an additional \$5 million and 50,000 man hours on LNP-only activities.) Inasmuch as Sprint PCS serves approximately 10% of all mobile customers, the resource savings from an early decision on the pending LNP forbearance petition would be sizable. It is important to emphasize that this does not represent all LNP costs; nor does it represent expenditures for other wireless carriers.

Sprint PCS requests that the Commission establish a target date of December 31, 2001 by which the Commission would act on the pending LNP forbearance petition. While this target date is aggressive, Sprint PCS submits that the issues are also straightforward and the case for

forbearance is clear. Indeed, the Commission found 30 months ago that the statutory forbearance criteria had been largely satisfied. The dramatic growth in competition in the mobile market since then now warrants complete forbearance of the LNP mandate.

There are two alternatives that the Commission could pursue if it believes an LNP forbearance decision date of December 31, 2001 is not practical. First, it could suspend the LNP implementation deadline to a date one year after it enters its order in this forbearance proceeding (without suspending the pooling start date). Alternatively, it could act favorably on the fully briefed pending reconsideration petitions that seek separation between the LNP and number pooling start dates, and set a new LNP deadline of January 2004, subject to action on the forbearance petition. Either action, however, must occur forthwith.

*Sprint PCS does **not** ask that the November 24, 2002 start date for number pooling be deferred.* To the contrary, Sprint PCS is submitting this petition in large part to help ensure that pooling is implemented both successfully and timely. Sprint PCS is committed to implementing number pooling on November 24, 2002. Expeditious grant of LNP forbearance would aid greatly in ensuring that the pooling conversion is also successful and that the reliability of wireless services is not impaired.

I. THE PROBLEM FACING THE CMRS INDUSTRY

On August 2, 2001, Verizon Wireless filed a petition for forbearance from the requirement that providers of commercial mobile radio service ("CMRS") carriers begin providing LNP on November 24, 2002.¹ Verizon Wireless made three arguments in support of its petition.

First, in response to an earlier forbearance petition submitted by CTIA, the Commission determined in February 1999 that the three criteria set forth in Section 10 of the Communications Act had been largely satisfied.² The Commission specifically found that (1) LNP is "not necessary to prevent unjust or unreasonable charges or practices by CMRS carriers;"³ (2) there is "no evidence that requiring wireless carriers to adhere to the current [LNP] implementation schedule is necessary to prevent harm to consumers;"⁴ and (3) forbearance of the LNP obligations is "also in the public interest on competitive grounds":

[T]he high churn rates associated with wireless carriers suggest that the lack of [LNP] currently is not a barrier to customers switching wireless carriers. . . . [W]e find that the factors that most influence competition (price, service area coverage, and service quality) may be more positively influenced by rapid construction of networks and provision of service by new entrants. . . .⁵

These observations were accurate in February 1999, and Sprint PCS submits that they are even more compelling today given the further dramatic growth in CMRS competition over the past 30 months.⁶

¹ See Verizon Wireless, Petition Pursuant to 47 U.S.C. § 160 for Partial Forbearance from the CMRS Number Portability Obligation, WT Docket No. 01-184 (Aug. 2, 2001).

² See *CTIA LNP Forbearance Order*, 14 FCC Rcd 3092 (1999).

³ *Id.* at 3101 ¶ 19.

⁴ *Id.* at 3103 ¶ 22.

⁵ *Id.* at 3109-10 ¶ 34.

⁶ See, e.g., *Sixth CMRS Competition Report to Congress*, FCC 01-192 (July 17, 2001); *Fifth CMRS Competition Report*, 15 FCC Rcd 17660 (Aug. 18, 2000); *Fourth CMRS Competition Report*, 14 FCC Rcd 10145 (June 24, 1999).

Second, in response to the CTIA filing, the Commission decided to extend the LNP conversion deadline, rather than eliminate the requirement, because of its belief that “implementation of LNP is a necessary precondition to the implementation of number pooling techniques used to conserve numbers.”⁷ However, this assumption is not completely accurate. As Verizon Wireless points out in its petition, what is needed to implement number pooling is not LNP, but a Local Routing Number (“LRN”) network architecture.⁸ LNP requires *additional* substantial investment, systems modification and labor resources to implement — activities and investment not needed for implementation of LRN or number pooling. As Verizon Wireless states:

There are many operational requirements (generated solely by the portability mandate) that are unnecessary for pooling. Unlike pooling, portability impacts all segments of a wireless carrier’s business and operations, including its billing systems, customer record, point of sale and customer care systems. In addition to the investment in systems hardware and software, portability will require carriers to set up systems to make comprehensible to their sales staffs and customers the limitation that the rate center system and carriers contracts place on customers’ ability to switch carriers but keep their number. These major changes are not caused by, nor are they needed for, pooling.⁹

Third, we have a numbering crisis in the country and the Commission has directed all “covered” CMRS providers (cellular, enhanced SMR, PCS) to begin participating in number pooling to help solve this crisis. Currently, CMRS carriers are required to implement number pooling on November 24, 2002, the same date they are to convert to LNP.¹⁰ Requiring carriers to “flash cut” to both LNP and number pooling on the same date jeopardizes their ability to successfully implement each capability and poses an unacceptable risk to continued network reliability. Pooling deployment activities should go forward independently, so that number optimi-

⁷ See *CTIA LNP Forbearance Order*, 14 FCC Rcd at 3113 ¶ 43.

⁸ See Verizon Wireless Petition at 9-13.

⁹ *Id.* at 10.

¹⁰ See *Second NRO Order*, Docket No. 99-200, FCC 00-429, 15 FCC Rcd 306, at ¶ 50 (Dec. 29, 2000).

zation efforts proceed without delay and so the reliability of mobile services is not negatively impacted because CMRS carriers tried to implement too many changes in too little time.

Verizon Wireless has made compelling arguments for forbearance of all LNP obligations on the CMRS industry. LNP is not required by statute (and, in fact, Congress specifically decided not to include CMRS carriers under the LNP mandate).¹¹ The Commission's LNP regulatory mandate is not necessary given the intense competition that exists in the CMRS market. LNP will increase carrier operating costs, with Sprint PCS currently estimating that its recurring costs alone of operating in an LNP environment will be at least \$50 million annually (much more if automation efforts are not successfully and timely completed).¹² Additional costs of this magnitude will necessarily be reflected in retail prices. LNP will also divert finite capital resources from investments in capabilities that the mobile public desires (*e.g.*, better coverage, more robust wireless web services, voice activated dialing).

Sprint PCS is taking the steps necessary to become capable of implementing number pooling by the November 2002 deadline and, under the national pooling schedule that will be in effect at this time, Sprint PCS must be capable of converting 21 Numbering Plan Areas ("NPAs") during the fourth quarter of 2002 — the same number that LECs must convert during that same period. However, by the fourth quarter of next year, over 100 additional NPAs will be in pooling, and a plan must be implemented so CMRS carriers can "catch up" to their LEC counterparts, which have been implementing pooling over the past three years. Sprint PCS submits that the resources and energy of the CMRS industry should be devoted to converting rapidly to number pooling (and implementing E911 Phase I and Phase II, CALEA and TTY) rather than

¹¹ The LNP mandate is set forth in 47 U.S.C. § 251(b)(2), and this mandate applies only to landline "local exchange carriers."

¹² Sprint PCS is currently reviewing its LNP cost estimates and hopes to have more firm data for its comments that it will submit on September 21, 2001.

to dilute those resources by simultaneously implementing LNP — a regulatory “solution” to a problem that does not exist in the competitive CMRS market.

The CMRS industry faces a serious problem, however, which necessitates the instant filing. While Sprint PCS is hopeful that the Commission will grant the Verizon Wireless forbearance petition,¹³ the practical problem industry faces is that in order to meet the current November 24, 2002 LNP deadline, carriers must, ten months or so in advance of the deadline (*i.e.*, shortly after the beginning of new year), begin signing vendor contracts and orders and begin increasing sharply the technical resources devoted to the LNP effect (as opposed to the LRN and pooling effort).

LNP activity that must be undertaken 10 months in advance of the LNP deadline are included in the porting project now in process and includes software and hardware purchases and labor hour expenditures. Vendor commitments for software are \$7.9 million, hardware are \$1.2 million, and labor covering systems analysis, design and build to modify 20+ existing core systems. Based on early analysis results, this labor includes a 50,000 hour analysis phase now in process and an estimated 120,000 additional hours to complete the design, build and test efforts. The “burn rate” based on the 50,000 hour analysis phase could reach 10,000 hours per month and be fully expended by January 1, 2002.

If a forbearance decision were made today, Sprint PCS estimates it would save \$26.1 million in LNP design, development, testing and implementation costs (in addition to the even larger recurring operating costs discussed above). Approximately 170,000 labor hours would be freed up for other projects. In contrast, if a forbearance decision is not made until December 31, 2001, Sprint PCS estimates it would save “only” \$21.1 million and “only” 120,000 labor hours

¹³ After all, the FCC recognized over 30 months ago that the statutory forbearance test had been satisfied and the market for mobile telecommunications services has only become more competitive since then.

could be redeployed to more productive work such as pooling. Given that Sprint PCS serves only a small percentage of the total mobile telecommunications market, the capital and labor savings that the entire industry could realize from a prompt Commission decision would be enormous.

Importantly, the network conversion scheduled for November 24, 2002 would be substantially narrowed in scope. As removal of the LNP mandate would enable Sprint to focus more on implementation and testing of pooling, Sprint PCS believes that the elimination of the LNP mandate will help ensure that pooling can be implemented on November 24, 2002 without exposing its network to undue risks of network reliability.

It is time for the Commission to establish priorities. Phase II E911 service is important. TTY capabilities are important. Implementing number pooling is important. The sooner the Commission removes the LNP regulatory mandate, the sooner industry can better focus its resources.

II. THE COMMISSION SHOULD ADOPT EXPEDITED DECISION-MAKING PROCEDURES IN THIS DOCKET

The Communications Act specifies that a forbearance petition “shall be deemed granted if the Commission does not deny the petition . . . within one year after the Commission receives it.”¹⁴ Because Verizon Wireless filed its petition on August 2, 2001, the Commission must act on it by August 2, 2002 — less than four months before the LNP implementation deadline. Given the magnitude of LNP, a CMRS carrier realistically could not possibly meet the November 24, 2002 LNP deadline if it waited until August 2, 2002 before making the investments needed to implement LNP. Each CMRS carrier thus faces having to incur expenses and make

¹⁴ 47 U.S.C. § 160(c). The statute permits the FCC to extend this deadline by “an additional 90 days” under certain circumstances. *Id.* The FCC historically has extended the period for acting on forbearance petitions.

efforts that would be entirely wasted in the event forbearance is granted. For example, Sprint PCS estimates that it will expend \$5 million and 50,000 man hours between today and the end of the year on LNP-only activities. The Commission is well aware of the current financial demands placed on the wireless industry. Forcing the industry to waste scarce and valuable resources simply makes no sense.

Given the competitive demands for CMRS resources (both capital and technical expertise), the Commission should resolve the LNP forbearance petition expeditiously to ensure that finite resources are targeted appropriately. Sprint PCS therefore requests the Commission to adopt the two steps discussed below to help ensure that the Commission decision on the LNP forbearance petition is timely rendered.

A. The Commission Should Accelerate the Reply Comment Date by Ten Days

Comments on the Verizon Wireless forbearance petition are due on September 21, 2001.¹⁵ Reply comments are due a month later, on October 22, 2001.¹⁶ Sprint PCS recommends that the Commission advance the reply comment date by 10 days, so the LNP reply comments would instead be filed by October 12, 2001. Such action would give the Commission additional time to deliberate and would permit more prompt action on this matter. In the past, the Commission has advanced the date of reply comments to give itself additional time to consider the matter before it.¹⁷

Sprint PCS submits that the issues raised by the Verizon Wireless forbearance petition are straightforward. The Commission has already addressed the applicability of the Section 10

¹⁵ See *Public Notice*, "WTB Seeks Comment on Wireless LNP Forbearance Petition Filed by Verizon Wireless," DA 01-1872 (Aug. 7, 2001).

¹⁶ See *id.*

¹⁷ See, e.g., *1998 Annual Access Tariff Filings*, 13 FCC Rcd 12090 (1998); *Expanded Interconnection*, 12 FCC Rcd 10529 (1997); *1997 Annual Access Tariff Filings*, 12 FCC Rcd 8425 (1997).

forbearance criteria to LNP, and the only change that has occurred since the Commission last addressed the issue is that the CMRS market has become far more competitive. Thus, if temporary LNP forbearance was appropriate in February 1999, LNP forbearance is even more compelling today.

Sprint PCS respectfully submits that parties do not require four weeks to prepare reply comments given that the issues have been fully briefed in the past. By advancing the reply comment date by 10 days, the Commission could begin its deliberations earlier and render a decision more quickly.¹⁸

**B. The Commission Should Establish a Decision-making Target
Date of December 31, 2001**

In order to implement LNP by a specified date, carriers need to sign vendor contracts and begin modifying numerous systems approximately 10 months in advance of the implementation deadline (at least if they are to have time to develop and test new systems and modifications to existing systems before using them in commercial service). Based on Sprint PCS estimates, this means as a practical matter that if significant implementation resources are to be saved, carriers need a decision on the LNP forbearance petition by the end of this year. (In fact, as noted, between now and the end of the year, Sprint PCS expects to spend \$5 million on LNP-only related planning and implementation.)

Sprint PCS appreciates that a 2.5-month decision-making period is brief. However, the additional investment Sprint PCS *alone* must make to implement LNP (vs. LRN and pooling) will entail tens of millions of dollars. Sprint PCS further suspects that the additional investment that the entire industry must make for LNP will be several hundred million dollars.

¹⁸ In addition, parties always retain the opportunity to share their views *via* the *ex parte* process.

The issue is not just money, however. Each carrier has finite technical resources and the commitment of these resources to LNP necessarily means that these same resources cannot be devoted to more productive use. In addition, the concurrent implementation of LNP and pooling increases exponentially the risk to network reliability. Given the huge sums and efforts involved, Sprint PCS encourages the Commission to attempt to resolve the LNP forbearance petition by the end of this year.¹⁹ The public interest is not served by industry's expenditure of hundreds of millions of dollars in pursuit of a mandate in advance of Commission consideration of the forbearance request.

III. THERE ARE OTHER ALTERNATIVES THAT THE COMMISSION COULD PURSUE

There are two other alternatives that the Commission could pursue if it believes a December 31, 2001 decision date on LNP forbearance is impractical. As discussed below, the Commission could act on certain pending reconsideration petitions or it could suspend temporarily the current LNP conversion deadline. If it follows this path, however, it must do so now.

A. The Commission Could Promptly Act on Certain CMRS Reconsideration Petitions

The Commission has historically and consistently required phased implementation of new technologies because it "consider[s] network reliability to be of paramount importance."²⁰ For example, it decided that landline LECs should phase-in LNP in the top 100 MSAs over a 15-month period, stating that it has "a significant interest in ensuring the integrity of the public

¹⁹ The FCC need not release the text of its order by the end of the year; Sprint PCS is asking only that by December 31, 2001, the FCC adopt its order and announce its decision.

²⁰ *First LNP Reconsideration Order*, 12 FCC Rcd 7236, 7285 ¶ 83 (1997). *See also Third LNP Reconsideration Order*, 13 FCC Rcd 16090, 16097 ¶ 10 (1998) ("We continue to believe that network reliability is of utmost importance.").

switched network as number portability is deployed nationwide.”²¹ The Commission thereafter permitted landline LECs to phase in number pooling under a separate schedule, finding that “a staggered rollout schedule is necessary.”²²

CMRS carriers, given the nature of their technology and the need to preserve nationwide roaming, cannot phase in LNP or number pooling. They must instead engage in a “flash cut” implementation of pooling, and they must also “flash cut” implementation of LNP. Last December, the Commission required CMRS carriers to “flash cut” to both capabilities on the same date.²³ The Commission adopted this approach because of its determination that it is technically possible (at least in theory) to implement both on the same date.²⁴

Sprint and others have petitioned the Commission to reconsider this decision.²⁵ These petitions demonstrated that the concurrent implementation of LNP and number pooling pose an undue risk to continued network reliability and that in establishing its same date implementation schedule, the Commission did not give sufficient attention to this important consideration. These reconsideration petitions were filed six months ago. All pleadings have been submitted, the record is complete and the matter is ripe for decision.

Thus, one option available to the Commission is to act on these petitions. If it follows this approach, Sprint PCS recommends that the Commission maintain the current November 24, 2002 pooling implementation date but that it defer the LNP implementation deadline to January 15, 2004 (shortly after 2003 holiday season). Such a schedule would enable the CMRS industry

²¹ *First LNP Order*, 11 FCC Rcd 8352, 8394 ¶ 79 (1996).

²² *First NRO Order*, 12 FCC Rcd 7574, 7645 ¶ 159 (2000).

²³ *See Second NRO Order*, Docket No. 99-200, FCC 00-429, 15 FCC Rcd 306, at ¶ 50 (Dec. 29, 2000).

²⁴ *See id.* at ¶¶ 50-51.

²⁵ *See, e.g.*, Sprint Reconsideration Petition, Docket No. 99-200, at 5-12 (March 12, 2000); Cingular Reconsideration Petition at 3-13 (March 12, 2001); CTIA Reconsideration Petition at 5-14 (March 12, 2001).

to focus on successful, timely implementation of pooling, while giving the Commission additional time to consider and act on the LNP forbearance petition.

B. The Commission Could Alternatively Suspend Temporarily the Current LNP Implementation Deadline

As yet another alternative, the Commission could temporarily suspend the current November 24, 2002 LNP deadline. Under this approach, the Commission would not change the November 24, 2002 start date for number pooling, but it would postpone the LNP deadline for one year (preferably, 15 months) after its decision on the Verizon Wireless forbearance petition.

The November 24, 2002 deadline that the Commission established for both pooling and LNP has never been ideal, since this date falls in the middle of the CMRS industry's busiest holiday season. Sprint PCS, like most CMRS carriers, ordinarily has a "quiet period" during this season when it does not install new technologies in its network. This consideration alone would suggest that the Commission defer the LNP deadline. As noted above, however, Sprint PCS does not seek a delay of the November 2002 pooling deadline.

Commission rules permit the Commission to suspend any deadline "for good cause shown, in whole or in part, at any time."²⁶ Number pooling is critically important, and Sprint PCS does not seek a delay of the November 24, 2002 start date. However, no one can dispute that the concurrent implementation of LNP will inhibit a carrier's ability to successfully implement pooling, since the conversion to two complex capabilities at the same time necessarily increases the risk of errors made during the implementation phase. Moreover, even if one believes that the benefits of wireless LNP outweigh the costs of implementing and operating LNP (although there is no record evidence supporting this view), the fact is there is no "magic" to the

²⁶ 47 C.F.R. § 1.3.

November 24, 2002 LNP start date.²⁷ If a 20-month extension of the LNP deadline was appropriate in February 1999, a further short extension is appropriate today, given that the CMRS marketplace has become even more competitive during the intervening time. The Commission's observation 30 months ago — "not only is CMRS competition currently growing rapidly without LNP, but in the near term, LNP does not appear to be critical to ensuring that this growth continues"²⁸ — remains equally valid today.

IV. CONCLUSION

The Commission's Chairman has stated that the Commission "must be efficient, effective, and responsive."²⁹ Other Commissioners share this view.³⁰ The Commission is now considering structural and procedural reforms to speed decision-making.³¹ To be efficient, effective and responsive in this particular instance, the Commission needs to act on the Verizon Wireless LNP forbearance petition by December 31, 2001 (or, alternatively, suspend the LNP conversion date for a period of time after the Commission acts on the forbearance petition).

²⁷ The FCC picked this date because it is the date the last initial group of PCS licenses must make their showing that they have satisfied the five-year PCS buildout requirements. See *CTIA LNP Forbearance Order*, 14 FCC Rcd at 3112 ¶ 39. Of course, this five-year PCS buildout rule date has no significance to cellular and enhanced CMRS licensees or to PCS licensees that obtained their licenses after 1997.

²⁸ *CTIA LNP Forbearance Order*, 14 FCC Rcd at 3102 ¶ 19.

²⁹ Summary of Opening Statement of FCC Chairman Michael K. Powell before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, at 1 (March 29, 2001).

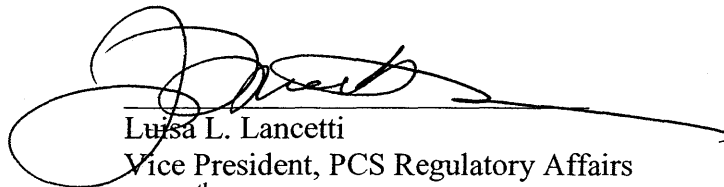
³⁰ See, e.g., Speech of Commissioner Kathleen Q. Abernathy to the 14th Annual Wireless Communications Association Convention (June 25, 2001) ("You are our customers — you deserve responsiveness, timeliness, and well-reasoned results.").

³¹ See, e.g., Mary Beth Richards, Special Counsel to the Chairman (Sept. 13, 2001). Among the recommendations that Staff has made to the Commissioners is that they "use forbearance authority more." See Presentation to the Commission, Status of FCC Reform, at 4 (Sept. 13, 2001).

The public interest is *not* served by the CMRS industry expending resources on LNP implementation if the Commission later determines that forbearance is appropriate. The public interest *is* served by having CMRS carriers focusing their energies and resources on implementing number pooling. Accordingly, Sprint PCS respectfully requests that the Commission either act on the LNP forbearance petition by December 31, 2001 or that it alternatively suspend the current LNP deadline.

Respectfully submitted,

SPRINT SPECTRUM L.P., d/b/a Sprint PCS

A handwritten signature in black ink, appearing to read 'L. Lancetti', is written over a horizontal line.

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